**CHIN SHUI LAN**

**v.**

**DIRECTOR OF LANDS & SURVEYS**

HIGH COURT SABAH & SARAWAK, KOTA KINABALU
TUAN TEE AH SING JC
[ORIGINATING MOTION NO. K25-04 OF 1995]
29 JULY 1995

***ADMINISTRATIVE LAW:*** *Application for order of certiorari to quash decision of Director of Lands & Surveys - Whether director had breached rules of natural justice - Whether director had made an error going outside of jurisdiction.*

The plaintiff made an application, by way of notice of motion for, *inter alia*, orders of *certiorari* and prohibition against the orders made by the Director of Land & Surveys (the Director). The plaintiff alleged that firstly, there was a breach of the rules of natural justice in that she was not given an opportunity of being heard in the purported Land Enquiry conducted by the Director and secondly, that the Director had made an error going outside the jurisdiction in overruling the decision of the Assistant Collector of Land Revenue.

**Held:**

**[1]** The heading to exhibit "CSL1" states "Director of Lands & Surveys, Land Enquiry No. 10/94. The words "Land Enquiry" would suggest that there was a land enquiry, at which the plaintiff was not given an opportunity of being heard. The rules of natural justice applies to the director acting under s. 119 of the Land Ordinance of Sabah (the Ordinance) because the applicant's interest has been affected by the director's administrative action. This is especially so as the distinction between judicial and administrative activities was swept away by the decision of the House of Lords in *Ridge v. Baldwin* and judicial review now lies against any person or body of persons charged with any public duty.

**[2]** The rule of natural justice that no man may be condemned unheard should apply to every case where an individual is adversely affected by an administrative action, no matter whether it is labelled "judicial", "quasi-judicial", or "administrative" or whether or not enabling statute makes provisions for a hearing. The great need is to deal efficiently and fairly, rather than to preserve all the accoutrements of the courtroom; the consideration of basic fairness being paramount.

**[3]** In the present case, the Director had arrived at his finding without giving an opportunity for the applicant of being heard and therefore the decision was invalid as infringing the principles of natural justice. Since there has been a denial of natural justice, the Court was in a position to interfere and make an order of *certiorari*. Furthermore, it is evident from exhibit "CSL2" that the Director had already made up his mind, to cancel the registration of the memorandum of transfer, on 18 August 1994 without giving an opportunity to the applicant of being heard and there was non-observance of the *audi alteram partem* rule.

**[4]** It is clear that under s. 119 of the Ordinance it is lawful for the Director "to revise or over-rule the decision of the Collector for the purpose of altering, rectifying or otherwise dealing with the registration of any title". This will include the right to overrule the decision of the Collector in respect of registration of transfer if the registration of transfer was not done in compliance with the Ordinance.

**[5]** The defendant's argument, that s. 41(2) of the Ordinance prohibits the Court from entertaining the plaintiff's application, is without merit. Since there is a breach of natural justice, the ouster clause in s. 41(2) does not apply and the Court can grant *certiorari*. Furthermore, in view of the finding of a breach of the principles of natural justice, the failure of the plaintiff to exhaust her right of appeal is not fatal to her application for *certiorari*.

*[Plaintiff's application allowed with costs].*

**Cases referred to:**
*Ridge v. Baldwin [1964] AC 40* ***(foll)***
*Ketua Pengarah Kastam v. Ho Kwan Seng [1977] 2 MLJ 152* ***(foll)***
*Board of Education v. Rice [1911] AC 179* ***(refd)***
*Raja Abdul Malek Muzaffar Shah bin Raja Shahruzzaman v. Setiausaha Suruhanjaya Pasukan Polis & Ors. [1995] 1 MLJ 308* ***(refd)***
*Inchcape Malaysia Holdings Bhd v. R. B Gray & Anor. [1985] 2 MLJ 297* ***(foll)***
*Tharmalingam v Sanbanthan [1960] MLJ 257* ***(cit)***
*Government of Malaysia & Anor. v. Jagdis Singh [1987] 2 MLJ 185* ***(foll)***

**Legislation referred to:**
Land Ordinance (Sabah Cap. 68), ss. 4, 41(2), 117, 118, 119, 121

*For the applicant - David Fung; M/s. Alex Pang & Co.*
*For the defendant - Juprin Adamal Wong; Senior State Counsel*
*For the successful bidders - S.H. Leong; M/s. S.H. Leong & Co.*

**JUDGMENT**

**Tee Ah Sing JC:**

This is an application by notice of motion by the applicant Chin Shui Lan for the following reliefs:

1) An order of *certiorari* to remove into this Honourable Court and quash the decision and the ensuing order made by the Director of Lands and Surveys, State of Sabah, on 9 January 1995, under the purported Land Enquiry No. 10/94 and under s. 119 of the Land Ordinance (Sabah Cap. 68) that the decision of the Assistant Collector of Land Revenue, Kota Kinabalu in accepting the memorandum of transfer of ownership on the title document comprised in Kota Kinabalu NT. 013099780 be overruled and that the registration of the memorandum of transfer made on 12 April 1994 in respect of the transfer of ownership on the said title document and the endorsement of memorial no. 01020601 thereon are thereby cancelled;

2) An order of prohibition directed to the Director of Lands and Surveys, Sabah, and the Assistant Collector of Land Revenue, Kota Kinabalu, and the Registrar of Titles, Sabah, and any officer acting under the authority of any of the aforesaidnamed persons prohibiting them or any of them from further proceeding in the matter of the order dated 9 January 1995 under the purported Land Enquiry No. 10/94, and from actually cancelling the said endorsement of memorial no. 01020601 on the said title document, and from proceeding with the delivery up of the issue document of title comprised in NT. 013099780 for cancellation of the said endorsement of memorial no. 01020601 under s. 121 of the Land Ordinance (Sabah Cap. 68); and

3) That all proceedings on the order at the purported Land Enquiry be stayed until after the hearing of the motion or further order.

The grounds upon which the reliefs are sought are as set out in paragraph 3 of the statement as follows:

(1) That the order is unlawful, null and void;

(2) That the said Director of Lands and Surveys erred going outside of jurisdiction in pronouncing the order when he unlawfully decided that he could overrule the decision of the Assistant Collector of Land Revenue in accepting the memorandum of transfer of ownership in respect of land held under NT 013099780 and cancel the registration of the memorandum of transfer dated 12 April 1994 as well as the endorsement of memorial no. 01020601 within the power conferred upon him under s. 119 of the Land Ordinance (Sabah Cap. 68), for the wrong decision on a jurisdictional fact or collateral question rendered the order outside jurisdiction, null and void;

(3) Further or in the alternative, that the order was contrary to natural justice in that the applicant was not given notice of the charge against her as well as the purported hearing under Land Enquiry No. 10/94 and was therefore not given an opportunity to be heard in the purported Land Enquiry; and

(4) Even further or in the alternative, that the order was contrary to natural justice in that the said Director of Lands and Surveys had prejudged the issue for determination as early as 18 August 1994 by having already decided to enforce what would be the effect of the order before having even heard the applicant.

The application is supported by the affidavit of the applicant affirmed on 16 February 1995. The relevant parts are as follows:

(2) On 9 January 1995 I was sent a copy of the decision and order of the Director of Lands and Surveys, State of Sabah, ("the Director") of the same date. A copy of the decision and order of the Director of Lands and Surveys dated 9 January 1995 ("the said order") is now produced and shown to me marked "CSL1".

(3) In the said order, the Director made the following order:

> In exercise of the authority vested upon the Director under s. 119 of the Land Ordinance, Cap. 68, **It Is Hereby Ordered** that the decision of the Assistant Collector of Land Revenue, Kota Kinabalu in accepting the memorandum of transfer in respect of the transfer of ownership on the title document comprised in Kota Kinabalu NT 013099780 be overruled.
>
> **It Is Hereby Further Ordered** that the registration of the memorandum of transfer made on 12 April 1994 in respect of the transfer of ownership on the title document comprised in Kota Kinabalu NT 013099780 and the endorsement of memorial no. 01020601 made thereon are hereby cancelled.

(7) Although the heading of the said order refers to a Land Enquiry No. 10/94, I have not been given notice of such an enquiry or hearing. Until today I do not know whether there has been a hearing conducted by either a Collector or the Director under the Land Enquiry before pronouncement of the above-quoted order.

(8) From the preamble to the said order, the Director admitted that he was "notified by Messrs S.H. Leong & Co., advocates and solicitors, acting for Encik Chiu Kui Choi @ Francis and Encik [SIC] Chu Shui Fatt @ Christinus Chiu that the land comprised in Kota Kinabalu Native Title 013099780 has been transferred despite of two existing prohibitory orders which were registered on 26 November 1993 and on 14 February 1993 *vide* memorial no. 01020360 and no. 01020505 respectively on the register title document kept in the office of the Assistant Collector of Land Revenue, Kota Kinabalu.

I was not aware of the charge made by the said S.H. Leong & Co. against me nor was I given an opportunity to be heard in the matter.

(10) Previous to the said order, as early as 18 August 1994, the Director has already prejudged the case against me. In the purported exercise of his power under s. 121 of the said Land Ordinance, the Director notified by his letter of 18 August 1994 that I have 30 days within which to deliver to his office the issue document of title comprised in NT. 013099780 for cancellation of the registered memorial no. 01020601. A copy of the Director's letter of 18 August 1994 is now produced and shown to me marked "CSL2".

(11) In the letter of 18 August 1994 the Director stated the same reason he later reiterated in the said order, which was that the memorandum of transfer made on 12 April 1994 under memorial no. 01020601 was made in defiance of two prohibitory orders registered prior to the transfer and therefore ought to be cancelled. It would therefore appear that the Director had wholly prejudged the matter when he made the said order on 9 January 1995. I am advised by my solicitors, which advice I verily believe, that even if a Land Enquiry had been convened, the Enquiry would be a farce: the Director had already at the outset predetermined the issue against my interest.

(12) The Director had proceeded to pronounce the said order against me without a fair and proper hearing (if there was a hearing at all) despite express notification to him by my solicitors by their letter dated 15 September 1994 which was received by the Director on the same date regarding my valid and registered interest in the land held under NT 013099780 as legal owner. A copy of my solicitors' letter of 15 September 1994 is now produced and shown to me marked "CSL3". There is also now produced and shown to me marked "CSL4" a copy of the issue document of title to NT. 013099780 showing clearly endorsed thereon my interest as full owner.

(13) My solicitors' letter of 15 September 1994 set forth my interest and right in the said land. In brief, I acquired the beneficial or equitable interest in the said land in about November 1991; my equitable interest was registered in April 1994. Since payment of the said purchase price in November 1991 the issue document of title to the said land was and still is held by my solicitors.

(14) The said letter of my solicitors also warned the Director from doing any acts prejudicial or which would affect my interest and right in the said land. In total disregard of my interest as the rightful owner of the said land, as the said order later showed, the Director unlawfully ordered that the Collector's decision in registering my interest on 12 April 1994 be overruled and my interest as owner of the said land be cancelled.

I shall now deal with the submissions of the parties.

The learned Counsel for the applicant submitted that there are two main issues, namely:

1) whether the Director has breached the rules of natural justice

2) whether the Director has made an error going outside the jurisdiction. If he had the effect is that his decision is unlawful, null and void.

I shall first deal with the issue of breach of the rules of natural justice. In exhibit "CSL1" there is a heading "Director of Lands and Surveys, Land Enquiry No. 10/94."

The words "Land Enquiry" would suggest that there was a land enquiry.

In exhibit "CSL1" there is no statement of the applicant's contention as set out in exhibit "CSL3".

From the first recital in exhibit "CSL1" it is clear that the Director had entertained the complaint lodged by Messrs. S. H. Leong & Co. The first recital reads as follows:

> **Whereas** the Director was notified by M/s. S.H. Leong & Co. Advocates & Solicitors, acting for Encik Chiu Kui Choi @ Francis and Encik Chu Shui Fatt @ Christinus Chiu of Kota Kinabalu that the land comprised in Kota Kinabalu Native Title 013099780 has been transferred despite of two existing Prohibitory Orders which were registered on 26 November 1993 and on 14 February 1993 vide Memorials No. 01020360 and No. 01020505 respectively on the register title document kept in the office of the Assistant Collector of Land Revenue, Kota Kinabalu.

The learned Counsel submitted that the applicant was not given the opportunity of being heard. The rules of natural justice applies to the Director acting under s. 119 because the applicant's interest has been affected by the Director's administration action.

The learned Counsel for the defendant conceded that there was breach of the rules of natural justice.

However the learned Counsel for the successful bidders in opposing the application submitted that the director was not acting judicially when he expunged the memorial no. 01020601 and set aside the registration of the transfer of the applicant but it was an administrative act and therefore not subject to judicial review. With respect, the distinction between judicial and administrative activities was swept away by the decision of the House of Lords in *Ridge v. Baldwin* [1964] AC 40 and I would agree that judicial review now lies against any person or body of person charged with any public duty.

His Lordship Raja Azlan Shah FJ (as he then was) succinctly explained what is meant by the principles of natural justice in the case of *Ketua Pengarah Kastam v. Ho Kwan Seng* [1977] 2 MLJ 152 at page 153 and 154 as follows:

> The principles of natural justice that no man may be Judge in his own cause and that no man may be condemned unheard today play a very prominent role in administrative law, particularly since the House of Lords invigorated them by a strong decision in *Ridge v. Baldwin*. The second principle is the rule requiring a fair hearing. This is of central importance because it can be used to construe a whole code of administrative procedural rights. The principle has a long history. One of the most famous cases is *Bentley's* case in 1723, in which it was held that the University of Cambridge could not deprive that great but rebellious scholar of his degrees without hearing his excuses for his misconduct: see *R. v. University of Cambridge*. In *Cooper v. Wandsworth Board of Works* damages were awarded against a local authority which demolished a building erected without due notification, although they did only what the statute said that they might do in such circumstance. The essence of this and many other such cases is that drastic statutory powers cannot be intended to be exercised unfairly, and that fairness demands at last the opportunity of a hearing. The Courts clung to this principle as the powers of government expanded, and applied it frequently in many fields such as housing law, compulsory purchase of land and dismissal from public offices. In one case the Court of Appeal has made it clear that the right to a fair hearing applies generally in licensing cases and in particular to an application for a licence for a gaming club: see *R. v. Gaming Board for Great Britain, ex parte Benaim and Khaida*. In that case the licensing authority had a legal duty arising purely from implication of law, to explain to the applicants what objections they had to meet and to give them a fair opportunity to meet them. The cases show that a fair hearing is required as a "rule of universal application", "founded on the plainest principles of justice." In particular, the silence of the statute affords no argument for excluding the rule, for the "justice of the common law will supply the omission of the legislature." These quotations are derived from the case of *Cooper v. Wandsworth Board of Works, supra*, which has several times recently been approved by the House of Lords as expressing the principle in its full width: see *Ridge v. Baldwin, supra*; *Wiseman v. Borneman.*

In my opinion, the rule of natural justice that no man may be condemned unheard should apply to every case where an individual is adversely affected by an administrative action, no matter whether it is labelled "judicial", "quasi-judicial", or "administrative" or whether or not the enabling statute makes provision for a hearing. But the hearing may take many forms and strict insistence upon an inexorable right to the traditional courtroom procedure can lead to a virtual administrative breakdown. That is because a formal hearing is too slow, too technical and too costly. Lord Shaw's caveat on administrative adjudication that "judicial methods may ... be entirely unsuitable, and produce-delays, expenses, and public and private injury" is too well-known to be sidestepped: see *Local Government Board v. Arlidge*. In the last analysis, it depends on the subject-matter. The great need is to deal efficiently and fairly, rather than to preserve all the accoutrements of the courtroom; the considerations of basic fairness are paramount. A passage from the judgment of Lord Denning MR in *R. v. Gaming Board for Great Britain, ex parte Benaim and Khaida, supra,* is apt:

> It is not possible to lay down rigid rules as to when the principles of natural justice are to apply: nor as to their scope and extent. Everything depends on the subject-matter: see what Tucker LJ said in *Russell v. Norfolk (Duke of)* [1949] 1 ALL ER 109, 118 and Lord Upjohn in *Durayappah v. Fernando* [1967] 2 AC 337, 349. At one time it was said that the principles only apply to judicial proceedings and not to administrative proceedings. That heresy was scotched in *Ridge v. Baldwin* [1964] AC 40. At another time it was said that the principles do not apply to the grant or revocation of licences. That too is wrong. *Reg. v. Metropolitan Police Commissioner, Ex parte Parker* [1953] 1 WLR 1150 and *Nakkuda Ali v Jayaratne* [1951] AC 66 are no longer authority for any such proposition. See what Lord Reid and Lord Hodson said about them in *Ridge v Baldwin* [1964] AC. 40, 77-79, 133.

And in the following passage he said this:

> It follows, I think, that the board have a duty to act fairly. They must give the applicant an opportunity of satisfying them of the matters specified in the sub-section. They must let him know what their impressions are so that he can disabuse them. But I do not think that they need quote chapter and verse against him as if they were dismissing him from an office, as in *Ridge v. Baldwin* [1964] AC. 40; or depriving him of his property, as in *Cooper v. Wandsworth Board of Works* [1863] 14 CBNS. 180.

The defendant did not file any affidavit in opposition.

I am of the view that the Director had arrived at his finding without giving an opportunity for the applicant of being heard and therefore the decision was invalid as infringing the principles of natural justice. Since there had been a denial of natural justice, the High Court was in a position to interfere and to make an order of *certiorari*.

In paragraph 2 of exhibit "CSL2" dated 18 August 1994 it is stated "In view of the improper registration of the memorandum of transfer made on 12 April 1994 under memorial no. 01020601, it is deemed void and therefore the endorsement made on the title document should be cancelled." It was signed by the Deputy Director. It should be noted that under s. 4 of the Ordinance that "Director" means the Director of Lands and Surveys or the Deputy Director of Lands and Surveys. It is clear that as early as 18 August 1994 the Deputy Director had already decided that the transfer to the applicant should be cancelled. It is evident from exhibit "CSL2" that the Director had already made up his mind on 18 August 1994 without giving an opportunity to the applicant of being heard.

If persons are to be deprived of any of their rights the rule of *audi alteram partem* must be strictly observed. I need only quote Lord Loreburn when he dealt with the powers of the Board of Education in *Board of Education v. Rice* [1911] AC 179 where he observed:

> In such cases the Board of Education will have to ascertain the law and also to ascertain the facts. I need not add that in doing either they must act in good faith and fairly listen to both sides, for that is a duty lying upon everyone who decides anything.

Further in the case of *Raja Abdul Malek Muzaffar Shah bin Raja Shahruzzaman v. Setiausaha Suruhanjaya Pasukan Polis & Ors* [1995] 1 MLJ 308 His Lordship Gopal Sri Ram JCA at page 32 said:

> These passages and the judgment in Kanda support the proposition that a fair procedure includes the duty of an arbiter not to take into account matters that have not been first put to the accused and he given an opportunity to rebut or to comment upon the same.

As such there is a breach of the rules of natural justice.

On the question of excess or want of jurisdiction, it was contended by the learned Counsel for the applicant that s. 119 of the Ordinance empowers the Director to revise or overrule the decision of the Collector on the issue of rectification and none others. He submitted that the words "the decision of the Collector" does not cover the decision of the Collector in accepting a memorandum of transfer and registration of the transfer.

Therefore he submitted that the Director has gone outside jurisdiction to overrule the decision of the Collector in accepting the memorandum of transfer and the registration of the transfer. The effect of an error going to jurisdiction that is null and void the orders of *certiorari* and prohibition are available and suitable. In support the case of *Inchcape Malaysia Holdings Bhd v. R. B Gray & Anor.* [1985] 2 MLJ 297 was cited.

However learned Counsel for the defendant contended that the Director has the jurisdiction to revise and overrule the decision of the Collector under s. 119 of the Ordinance in order to rectify the decision and error of the Assistant Collector of Land Revenue in view of the prior existing prohibitory orders. He also contended that the last sentence "for the purpose of altering rectifying or otherwise dealing with the registration of any title" in s. 119 of the Ordinance is wide enough to cover the issue raised by the applicant. He also submitted that by virtue of s. 41(2) of the Ordinance no Court should entertain this application.

The learned Counsel for the successful bidders submitted that s. 119 of the Ordinance gives power to the Director to cancel the illegal act of the Collector in view of two prior existing prohibitory order. He further submitted that s. 41(2) of the Ordinance excludes the jurisdiction of the Court. He also submitted that the Court could not interfere because the designated domestic tribunal being far more competent to determine the question than any Court in the land. In support he cited the case of *Tharmalingam v Sanbanthan* [1960] MLJ 257.

Sections 117, 118 and 119 of the Ordinance reads as follows:

Rectification of Title

> 117. If any document of title under which land is claimed by any person contains, in the opinion of the Collector, no means within itself of identifying with reasonable certainty the land to which it relates, or contains errors or omissions either in the original title or in later endorsements, the Collector may, by notice in writing under his hand, require such person to deliver up the same in order that such corrections or additions may be made thereto, whether by the endorsement of a plan thereon or otherwise, and such person

shall be bound so to deliver up the same within one month from the date of the service of the notice. When such corrections or additions as aforesaid have been duly made the Collector shall return such document of title to the person entitled to the custody thereof.

Retification of register etc.

118. (1) Except as is provided by subsections (4) and (5) any person claiming any estate or interest in land may at any time apply to the Collector for an order that any register, book or journal kept in his Land Office under this Ordinance shall be rectified, or that any entry may be made or interpolated in any such register, book or journal, or that any entry therein may be cancelled; and the Collector, after giving such notice of the application and making such enquiry as he may think fit, may either refuse such application, or, if satisfied as to the justice of the case, may make such order in reference thereto as he may think just.

Rectification by the Director

119. It shall be lawful for the Director at any time on his own motion to revise or over-rule the decision of the Collector, or to take such proceedings as he may deem fit for the purpose of altering, rectifying or otherwise dealing with the registration of any title.

I am of the view that these three sections deal with different matters. I am therefore of the view that the application of s. 119 of the Ordinance is not restricted by ss. 117 and 118 of the Ordinance.

It is clear that under s. 119 of the Ordinance it is lawful for the Director "to revise or overrule the decision of the Collector" for the purpose of altering rectifying or otherwise dealing with the registration of any title.

This will include to overrule the decision of the Collector in respect of registration of transfer if the registration of transfer was not done in compliance with the Ordinance.

If the registration of the transfer was proper then the Director has no power to overrule the decision of the Collector in which case it would be in excess or want of jurisdiction on the part of the Director.

Section 41 of the Ordinance reads as follows:

41. (1) An appeal shall be from any order or decision of a Collector, Settlement Officer, Surveyor or Registrar given under this Ordinance to the Director and again from any order or decision of the Director, whether original or an appeal, to the Court;

Provided that no appeal shall be admitted:

(a) After the expiration of thirty days or where any of the parties are resident outside Sabah, ninety days, from the date of the order or decision appealed against;

(b) ...

(c) ...

(d) ...

(2) Except as herein expressly provided, no Court shall exercise jurisdiction as to any claim or question in respect of which jurisdiction is given by this Ordinance to a Collector or the Director.

Provisions similar to s. 41(2) have been labelled "no *certiorari*" clauses or "ouster clauses". In the case of *Inchcape Malaysia Holdings Bhd v R.B. Gray & Anor*. [1985] 2 MLJ 297 His Lordship Salleh Abas LP at page 306 said:

Until *South East Asia Fire Bricks* case was decided it was generally understood that *certiorari* or prohibition would issue If there was an error of law on the face of the record. The case which overruled a number of Malaysian decisions, however, divided an error of law into two categories: error of law within the jurisdiction, and error of law affecting the jurisdiction. Only the latter category of error deprives an inferior tribunal of its jurisdiction. Lord Frazier of Tullybelton delivering the judgment of the Privy Council said:

> When words in a statute oust the power of the High Court to review decisions of an inferior tribunal by *certiorari*, they must be construed strictly, and that they will not have the effect of ousting that power if the inferior tribunal has acted without jurisdiction or 'if it has done or failed to do something in the course of the inquiry which is of such a nature that its decision is a nullity' (per Lord Reid, at p. 171 in *Anisminic Ltd v. Foreign Compensation Commision* [1969] 2 AC 147). But if the inferior tribunal has merely made an error of law which does not affect its jurisdiction, and if its decision is not a nullity for some reason such as breach of the rules of natural justice, then the ouster will be effective. (pp. 166 & 167).

Since I find that there is breach of the rules of natural justice in the instant case the ouster clause does not apply and the Court can grant *certiorari*.

In the case of *Government of Malaysia & Anor. v. Jagdis Singh* [1987] 2 MLJ 185, Tan Sri Hashim Yeop A. Sani SCJ, delivering the judgment of the Supreme Court dealt with the question as to whether domestic remedies must be exhausted if such remedies are available.

The learned Judge examined a series of authorities and at page 189 he said:

> A clear principle is reiterated here i.e. it is not a rigid rule that whenever there is an appeal procedure available to the applicant he should be denied judicial review. Judicial review is always at the discretion of the Court but where there is another avenue or remedy open to the applicant it will only be exercised in very exceptional circumstances.
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> *In Re Preston* was a tax case. It was quite clear from the speeches of their Lordships in the House of Lords that the Inland Revenue Commissioners were not immune from the process of judicial review. But what was also made clear is that remedy by way of judicial review is not to be available where an alternative remedy exists except in very exceptional cases.
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> In answer to the first question we would therefore hold that the discretion is still with the Courts but where there is an appeal provision available to the applicant *certiorari* should not normally issue unless there is shown a clear lack of jurisdiction or a blatant failure to perform some statutory duty or in appropriate cases a serious breach of the principles of natural justice.

In view of my finding that there is a breach of the principles of natural justice, the failure of the applicant to exhaust her right of appeal is not fatal to her application for *certiorari*.

In view of the foregoing I granted the reliefs sought in paragraph 2 of the statement. I also ordered costs to be paid to the applicant.